

Species 8 - fuel type disclosed in claim 56;
Species 9 - fuel type disclosed in claim 57; and
Species 10 - fuel type disclosed in claim 58.

See Office Action at 2.

Applicants respectfully traverse the restriction requirement. However, to be fully responsive, Applicants provisionally elect the subject matter of ceramic material Species 3 ($\text{La}_{1-x}\text{Sr}_x\text{Co}_{1-y}\text{Fe}_y\text{O}_{3.5}$) and fuel type Species 8 (hydrocarbon in gaseous form). Finally, Applicants submit that at least claims 31-33, 37-53, 56, 57, 59, and 60 read on the provisionally elected species.

Applicants traverse the election of species on two grounds.

First, the demand for an election of species is legally deficient on its face. Contrary to the practice of the U.S. Patent and Trademark Office, the Examiner has failed to provide any reasoning whatsoever as to the basis for the allegation of a lack of unity of invention. After identifying the groups of species for election, the Examiner is **required** to identify the basis for asserting that lack of unity exists under PCT Rule 13.1. See M.P.E.P. § 1893.03(d). Yet here, the Examiner has not even attempted to apply form paragraphs 18.07 thru 18.07.03, as recommended by the M.P.E.P., let alone provide any analysis whatsoever. See *id.*; see also, M.P.E.P. § 1850.

Second, the Examiner's selection of species lacks logic or reasoning and, in fact, does not constitute a selection of species from the same genus. With respect to the ceramic material "species," while claims 34, 35, 36, 38, and 39 recite an anode comprising a ceramic, claim 49 further characterizes a cathode comprising a ceramic. In fact, claim 49 discloses the same ceramic as claim 38. Further "species" 4 is directed to claim 46, which recites a specific doped ceria, which may be a component of all of

the other ceramic materials as per claim 31, but is not deemed a ceramic material itself as the term is used in the claims. With respect to the fuel type "species," claims 57 and 59 recite fuel type examples within the scope of claim 56 and not separate "species" of fuel type. Similarly, claim 55 recites a fuel type example within the scope of claim 58 and not a separate "species" of fuel type.

There is simply no legal or factual basis for the Examiner's assertion of a lack of unity of invention.

If the Examiner chooses to maintain the election of species requirement, Applicants expect the Examiner, if the elected species are found allowable, to continue to examine the full scope of the elected subject matter to the extent necessary to determine the patentability thereof, *i.e.*, extending the search to a "reasonable" number of the non-elected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 18, 2010
By: 
Anthony A. Hartmann
Reg. No. 43,662